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In the Supreme Court of the United States

OCTOBER TERM, 1989

LOCAL 30, UNITED SLATE, TILE AND COMPOSITION ROOFERS, DAMP AND WATERPROOF WORKERS ASSOCIATION AND RESIDENTIAL REROOFERS, LOCAL 30B, UNITED SLATE, TILE AND COMPOSITION ROOFERS, DAMP AND WATERPROOF WORKERS ASSOCIATION, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the district court had authority under 18 U.S.C. 1964(a) to grant injunctive relief directed to the Roofers Union, the enterprise whose affairs had been conducted through a pattern of racketeering activity.

2. Whether the district court's remedial decree violated the First Amendment rights of the union members.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A16) is reported at 871 F.2d 401. The opinion and order of the district court granting a preliminary injunction (Pet. App. A19-A93) are reported at 686 F. Supp. 1139. The order of the district court making the preliminary injunction final (Pet. App. A17-A18) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on March 23, 1989. The petition for a writ of certiorari was filed on June 20, 1989. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. On December 2, 1987, the United States filed a civil complaint in the United States District Court for the Eastern District of Pennsylvania against petitioners, two local unions referred to collectively as the Roofers Union, and against 13 of the Union's officials. Pet. App. A20. The Roofers Union is a labor organization with headquarters in Philadelphia, Pennsylvania, that represents about 2,000 people employed in eastern Pennsylvania, southern New Jersey, and Delaware. *Id.* at A23. The complaint was brought under the civil injunctive provision of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. 1964(a).[1] It alleged that the 13 individuals had conducted the affairs of the Roofers Union through a pattern of racketeering activity, in violation of 18 U.S.C. 1962(c), and that they had conspired to violate Section 1962(c), in violation of 18 U.S.C. 1962(d). Pet. App. A3-A4. Nine days earlier, the 13 Union officials had been convicted of 152 counts of criminal activity, including conspiracy to violate RICO, substantive RICO violations, bribery, mail fraud, and extortion. *Id.* at A49. The government sought preliminary and permanent injunctive relief to bar the individual defendants from par-

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[1] 18 U.S.C. 1964(a) provides:

> The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

ticipating in the affairs of the Roofers Union, and to appoint a trustee to discharge the duties of the Roofers Union's officers until an election of new officers could be held. The government also sought to invalidate a union election that was held in December 1987. *Id.* at A3-A4.

2. On May 23, 1988, after an evidentiary hearing, the district court made extensive findings of fact and concluded that the Union had been operated through a pattern of racketeering. The court described the use, over a 20-year period, of physical coercion, violence, threats of violence, and terrorism to force roofing companies to sign collective bargaining agreements. Pet. App. A25-A39. Sabotage, vandalism, and other tactics were employed against non-union contractors to make doing business more difficult and more expensive for those contractors. *Id.* at A39-A42. The leadership of the Roofers Union also used threats and violence as its primary tactic for resolving disputes with Union contractors. *Id.* at A42-A49. The court detailed the repeated abuses of union power and resources (*id.* at A56-A59), recurrent threats and harassment against members during the December 1987 union election (*id.* at A60-A66), and a pervasive fear among members who were reluctant to attend Union meetings because of intimidation and violence sponsored by the Union's leaders (*id.* at A66).

The court found that the evidence established that the racketeering activity of the individual defendants extended far beyond the acts for which they had been convicted and sentenced, and that many more officers, agents, members, and accomplices of the Roofers Union were involved in the illegal activities than those who had been convicted. Pet. App. A66-A67. The court therefore concluded that the abuses of the past were not likely to cease with the removal of the 13 individual defendants from office, and

that "[t]he systematic practice of functioning on a basis where violence and blatant violations of law were official Union policy over the last twenty years creates a substantial likelihood of continued violations and the *perception* by people in the industry as well as members of the Roofers Union itself that such violations will continue." *Id.* at A67 (emphasis in original).

The district court discussed a number of options for relief. It found that, although dissolution of the Union would be "fully justified by the overwhelming weight of the evidence," that was not an appropriate course of action. Pet. App. A77. The court also rejected the government's proposed imposition of a trusteeship, as well as the defendants' suggestion that the court simply act as a monitor of the Union in the continued operation of its normal activities. *Id.* at A77-A78. Instead, the court chose a "decreeship," under which the present Union structure and leadership would remain in place, but certain Union activities that had been the focus of abuse would be subject to court-imposed conditions. *Id.* at A79-A80. In that way the court intended to preserve the normal existence of the Union, with its democratic processes and elected leadership, while effecting a reform of the abusive practices that the evidence revealed. *Ibid.*

The district court's decree provided that (1) a court-appointed Liaison Officer would assure compliance with the decree, (2) the Roofers Union would develop a grievance/arbitration procedure for resolving contractual disputes between the Union and its employers, (3) an audit of the Roofers Union and its affiliated entities would be conducted, (4) the Liaison Officer would be an observer at face-to-face collective bargaining sessions and would have the authority to suspend bargaining and prevent agreements if fear, violence, intimidation, or threats were present, (5) the court would control all matters within the

jurisdiction of the Union that required the expenditure of Union funds, and (6) all Union records would be made available to the Liaison Officer. Additionally, the court enjoined the individual defendants from participating in Roofers Union affairs and from being employed in the roofing and related construction industries within the Union's jurisdiction. Pet. App. A86-A93. On July 22, 1988, the court converted the preliminary injunction into a final decree. *Id.* at A17-A18.

3. The Roofers Union appealed, and the court of appeals affirmed the district court's judgment in its entirety. Pet. App. A1-A16. The Union argued that the district court lacked jurisdiction to enforce the decree because the Union was a victim, not a violator of the RICO statute, and because no defendant had been convicted of acquiring or maintaining an interest in the Union through racketeering activity under 18 U.S.C. 1962(b). The court of appeals rejected those arguments. The court noted that "the purpose of the decree was to aid the Union, rather than to hold it liable" (Pet. App. A8) and that neither a finding of Union liability under 18 U.S.C. 1962 nor a finding of 1962(b) acquisition or maintenance was a prerequisite for an injunctive decree. Pet. App. A9-A10. The court then rejected the Union's argument that the injunction was impermissibly broad. The court concluded that "[t]he record supports the district court's finding that the removal of the thirteen individual defendants would not have eliminated the corrupt influence from the Roofers Union." *Id.* at A12. Rather, the court found that the record supported the district court's finding that without injunctive measures, there would be "a significant likelihood of continued RICO violations." *Id.* at A15. In sum, the court of appeals concluded that the decree would not impair the members' control of the affairs of the union, but would "actually protect[] the membership's right of self-government." *Id.* at A14.

ARGUMENT

1. Petitioners renew their legal challenge (Pet. 5-7) to the district court's authority to impose the decree against the Roofers Union. They argue that, under 18 U.S.C. 1964(a), the district court's jurisdiction extends only to parties who are shown to have violated 18 U.S.C. 1962. Thus, they claim, the court was empowered to impose injunctive relief only against the 13 individuals who were found guilty of RICO violations, and not against the Union, which was not found to have violated RICO and which was instead the victim of the Union leaders' misconduct. This argument is without merit.

Petitioners' contention is contrary to the plain language of the statute. The civil injunctive provision grants jurisdiction "to prevent and restrain violations of section 1962 * * * by issuing appropriate orders" and specifically authorizes "ordering dissolution or reorganization of any enterprise" as one of a wide range of civil remedies, the choice of which is committed to the district court's discretion. 18 U.S.C. 1964(a). The statute thus plainly authorizes injunctive relief directed to the enterprise, without requiring that the enterprise itself be found in violation of 18 U.S.C. 1962. In addition to this explicit authorization, the civil injunctive provision nowhere limits the court's jurisdiction to persons or entities that are shown to have violated the statute. Instead, Section 1964(a) consistently refers to "any person" and "any enterprise."

Petitioners' argument is also contrary both to the legislative history of the civil injunctive provision and to the statute's general remedial purpose. As the court of appeals pointed out (Pet. App. A6), Congress made clear in enacting the RICO statute that it intended to grant the courts broad powers under Section 1964(a). The House Report stated that Section 1964(a) "contains broad provisions to allow for reform of corrupted organizations." H.R. Rep.

No. 1549, 91st Cong., 2d Sess. 57 (1970). The report further stated that "[a]lthough certain remedies are set out, the list is not meant to be exhaustive, and the only limit on remedies is that they accomplish the aim set out of removing the corrupting influence and make due provision for the rights of innocent persons." *Ibid.*[2]

This Court has endorsed the view that the RICO statute "is to be read broadly." *Sedima* v. *Imrex Co., Inc.*, 473 U.S. 479, 497 (1985). The Court has noted that Congress intentionally chose "expansive language" (*id.* at 498) and that Congress had specifically stated that the statute was to be "liberally construed to effectuate its remedial purposes." Organized Crime Control Act of 1970, Pub. L. No. 91-452, § 904(a), 84 Stat. 947. See *H.J., Inc.* v. *Northwestern Bell Telephone Co.*, 109 S. Ct. 2893, 2905 (1989) (reiterating the importance of RICO's " 'self-consciously expansive language and overall approach' "); *United States* v. *Turkette*, 452 U.S. 576, 586-587 (1981).

In support of their contention that no injunctive remedy should be imposed against the Union because it was not found in violation of 18 U.S.C. 1962, petitioners cite only another Third Circuit decision, *Petro-Tech, Inc.* v. *Western Co. of North America*, 824 F.2d 1349 (1987). As the court of appeals explained, however (Pet. App. A7-A8), that case is readily distinguishable. *Petro-Tech* involved claims for damages to private parties under 18 U.S.C. 1964(c), not an injunctive remedy "to prevent and restrain" RICO violations under Section 1964(a). In *Petro-Tech*, the court held that the enterprise, the victim of the racketeering activity, could not be held liable for damages as a result of RICO violations by its employees if the em-

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[2] See also S. Rep. No. 617, 91st Cong., 1st Sess. 79 (1969) (referring to RICO's "civil law approach of equitable relief broad enough to do all that is necessary to free the channels of commerce from all illicit activity").

ployees were the RICO "persons" charged as defendants under 18 U.S.C. 1962(c). Here, on the other hand, the enterprise may properly be made the subject of injunctive relief, which is designed to aid the enterprise, rather than to punish or seek recovery from it. Petitioners' contention that *Petro-Tech* should govern and that the district court's decree improperly imposes liability on the Union fails to appreciate this critical difference.[3]

Petitioners also contend that the district court's decree was "more than was necessary to prevent and restrain the violations of § 1962 that had been proven." Pet. 6. That objection ignores the district court's findings of fact, which petitioners have not challenged as clearly erroneous. The district court specifically found that the 13 defendants were not the only individuals who had been involved in the pervasive corruption and violence associated with the Union's affairs, and that simply disqualifying the 13 convicted officials would not be sufficient to "prevent and restrain" further violations of Section 1962.[4]

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[3] To the extent that petitioners suggest that the two Third Circuit opinions are in conflict, moreover, it is notable that the Third Circuit perceived no conflict and that petitioners did not seek rehearing en banc to resolve the purported intra-circuit conflict.

[4] See, *e.g.*, Pet. App. A67 ("The court finds that persons who have been active in the criminal program of the Union in the past remain in influential positions within the Roofers Union, and have not all been removed by the recent election."); *ibid.* ("Abuses of the past are not likely to stop with the removal of the thirteen individual defendants from their positions."); *ibid.* ("Convicted officials have been involved in the nominating and election process for new Union officers who now hold office."); *id.* at A56 ("The individual defendants *and their allies and associates* have managed the assets and used the power of the Union over the past twenty years in such a way as to benefit them-

2. Petitioners also contend (Pet. 7-10) that the decree violates the First Amendment rights of the Union members to free association and free speech. This contention is also without merit.

First, petitioners raise this issue for the first time in this Court. When an issue has not been presented to the district court or the court of appeals, this Court does not ordinarily consider it. *Berkemer* v. *McCarty*, 468 U.S. 420, 443 (1984); *United States* v. *Lovasco*, 431 U.S. 783, 788-789 n.7 (1977); *Lawn* v. *United States*, 355 U.S. 339, 362-363 n.16 (1958).

In any event, there is no substance to petitioners' First Amendment claim. As the court of appeals concluded, the district court's decree was narrowly tailored to remedy the specific abuses that the court had found. Pet. App. A13-A15. The financial restrictions and auditing requirements were imposed to protect the Union treasury from being used for improper or illicit purposes, as it had been in the past. *Id.* at A13. The decree minimizes the impact on the Union's right to govern itself, because it permits the newly elected Union leaders to remain in office, rather than ordering dissolution or a trusteeship. *Id.* at A14. The decree itself, moreover, furthers the membership's right of self-government. As the court of appeals observed, the district court's findings of facts included the finding of "an actual, legitimate and well-founded fear of attending meetings at the [Union] Meeting Hall" (*ibid.*), and the decree helps to dispel that fear.

Thus, the district court's decree was crafted precisely to preserve the Union's right to govern itself and to continue

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selves rather than the membership of the Union.") (emphasis added); *id.* at A67 ("[T]he evidence establishes the involvement of many more officers, agents, members and accomplices of the Roofers Union than have been convicted thus far.").

to operate in its members' interests, while bringing a halt to the kinds of corrupt practices that had in the past interfered with the members' participation in Union activities and resulted in illegal disbursements of Union funds. Rather than interfering with the members' First Amendment rights of association and expression, the district court's decree protects and enhances those rights. Pet. App. A14.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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